

1 until approximately the time of the discovery deadline. Counsel for the Town Defendants
2 acknowledges that they bring this motion for stay late in the course of the entered discovery
3 schedule but assert in their Reply that their failure to more timely assert this motion results
4 in part from their desire to cooperate with the necessary discovery needed by Plaintiff's
5 counsel, Plaintiff's discovery disputes with the Town Defendants and with its co-defendant,
6 the dilatoriness of Plaintiff's counsel in seeking reasonable depositions relating to the Town
7 Defendants' motion, and the unreasonable positions taken by Plaintiff's counsel.

8 Respectfully, the Court observes that even assuming all of the above, nothing
9 prevented the Town Defendants from filing their qualified immunity motion at an earlier
10 date. And, if the Town Defendants needed discovery prior to filing its motion beyond the
11 facts that its own witnesses could have set forth by affidavit, nothing prevented the Town
12 Defendants from pursuing such discovery early on and filing their motion. As of yet, there
13 are no facts presented to the Court on which the Court could determine that the Plaintiff's
14 claims against the Town Defendants are "insubstantial claims" of the kind that should spare
15 it from participating in further discovery. *Pearson v. Callahan*, 129 S. Ct. 808, 815 (2009).
16 To stay the action now would require the Court to assume that Plaintiff's claims are of this
17 nature. Respectfully, the Court is disinclined to engage in any such assumptions in the
18 absence of some kind of evidence from which it could draw such conclusions. Further, to
19 stay the action now would only further delay by four months the discovery schedule for all
20 parties. All would have to wait in a period of total unproductivity while the Town
21 Defendants' motion was filed, briefed and decided. The fact of having the litigation open
22 and non-functioning would have its costs for all parties, would save the Town Defendants
23 little, and would cost the other parties much. The Town Defendants' motion is denied.

24 Counsel for Plaintiff requests attorneys' fees incurred in responding to the Motion.
25 While he presents some basis for his motion, the Court is not convinced that counsel for
26 Plaintiff has not also contributed to the creation of an unprofessional environment that has
27 lately taken hold of this litigation. In its discretion, therefore, the Court declines to award
28 such fees. Accordingly,

IT IS HEREBY ORDERED denying the Town Defendants' Motion to Stay Discovery (Dkt. # 60), and denying Plaintiff's request for attorneys' fees incurred in responding to the Motion.

DATED this 15th day of April, 2010.

G. Murray Snow
G. Murray Snow
United States District Judge